13 Id. 572 (1878); *Cox* v. *Wood*, 20 Ind. 54 (1863); *Palmer* v. *Rankins*, 30 Ark. 771 (1875); *Henry* v. *Blackburn*, 32 Id. 452 (1877); *Lewis* v. *Yale*, 4 Fla. 418, 424 (1852); *Frank* v. *Lilienfeld*, 33 Gratt. 377, 395 (1880); *Hulme* v. *Tenant*, 1 Bro. C. C. 20 (1778). But it seems that the real estate may be sold if necessary to discharge the obligation: *Whitesides* v. *Cannon*, 23 Mo. 457 (1856); *Tiernan* v. *Poor*, 1 G. & J. (Md.) 217 (1829); *Yale* v. *Dederer*, 21 Barb. 290 (1855); *Dale* v. *Robinson*, 51 Vt. 20 (1878).

Upon the death of a *feme covert* having a separate estate not disposed of by her will, the personalty goes to the husband as her administrator: *Proudley* v. *Fielder*, 2 My. & K. 57 (1833); *Molony* v. *Kennedy*, 10 Sim. 254 (1839); *Johnstone* v. *Lumb*, 15 Id. 308 (1846); *Musters* v. *Wright*, 2 De G. & Sm. 777 (1848). But undisposed of real estate goes to the heir, subject to the husband's right as tenant by the curtesy: *Roberts* v. *Dixwell*, 1 Atk. 607 (1738); *Pitt* v. *Jackson*, 2 Bro. C. C. 51 (1786); *Foblett* v. *Tyrer*, 14 Sim. 125 (1844); *Harris* v. *Mott*, 14 Beav. 169 (1851); *Appleton* v. *Rowley*, L. R., 8 Eq. 139 (1869); *Dale* v. *Robinson*, 51 Vt. 20, 26, 31 (1878).

The conclusion of the court in the principal case is that the general creditors are to be paid out of the assets of the general estate, to the exclusion of the special creditor. No question can be raised as to the correctness of this conclusion. But when the court goes on to say that if the assets of the general estate are insufficient to satisfy such creditor, he may come in and share *pro rata* in the separate estate with the special creditor, there may be reason for asking why the equity should not be recognised to its full extent, and the general creditor be postponed to the special creditor, and only allowed to share in whatever remains of the separate estate after the special creditor has been paid. Otherwise, the general creditor gains an undue advantage, and the special creditor loses a corresponding advantage, by reason of the death of the *feme covert*.

HENRY WADE ROGERS.

Supreme Court of Pennsylvania.

A. H. VANHORN *v.* JOHN GILBOUGH ET AL.

A general custom that a broker may pledge his customer's stock for the purpose of raising money to carry it, is valid.

When the market value of stock so pledged falls below a price that will reimburse the broker for all expenses, a custom of brokers to sell out the customer's stock without notice, and hold the latter liable for the loss, is valid.

Aside from any usage, the admission of the customer that he never intended to pay for, and take up the stock, estops him from complaining of want of notice, or informality in the giving of notice.

ERROR to the Common Pleas of Luzerne county.

Assumpsit by Gilbough, Bond & Co. against A. H. Van Horn.

The cause was referred to Hon. Henry M. Hoyt as referee, whose finding of facts and of law was as follows:—

1. In May 1872, the defendant, through Thomas Wilson,

directed the plaintiffs, Gilbough, Bond & Co., a firm of brokers in Philadelphia, to purchase for him at the market price three hundred shares of the capital stock of the Philadelphia and Reading Railroad Company. The plaintiffs immediately made the purchase at $58\frac{7}{8}$ per share, that being the market price, and the stock was delivered to them on the same day, or the day following. The defendant paid $1500 on account, and the plaintiffs raised the balance for defendant, by a pledge of the stock as collateral, and they duly rendered him a statement, showing a balance against him, 31st May 1872, of $16,254.75. That the stock would be retained as collateral to the balance due, was understood by defendant at the time of purchase. Plaintiffs, in order longer to carry the stock for defendant, paid the interest and the usual broker's commissions, as cost of carrying the same, and charged such cost against the defendant.

2. That where stock is only partially paid for by party ordering its purchase, it was and is the custom of brokers to use the stock as collateral to raise money to carry the same for the customer, and the custom was known to Thomas Wilson at the time he ordered the purchase for the defendant.

3. That whenever the market value of the stock falls below a price that will fully reimburse the broker for all outlays and expenses, it is the custom between brokers, as well as between brokers and their customers, to sell the latter's stock at the stock exchange without notice, and hold the customer for the loss; this custom being likewise known to Mr. Wilson.

4. That plaintiffs, by letter dated September 23d 1873, gave notice to defendant to take up by twelve M. next day the stock already pledged by them as collateral, and advise them by telegraph.

Again by letter on the 8th October they notified defendant to pay for and take up the stock. No answer was ever sent nor any attention paid by the defendant to either of these letters.

5. That on the 22d day of September 1873, the parties to whom the same were pledged sold out two hundred shares of the defendant's stock at the Stock Exchange, Philadelphia, at $48 per share, and on the 18th of October, the remaining one hundred shares at $50\frac{1}{4}$, the loss of price being borne by plaintiffs; that the prices received were the market prices of the stock on the respective days of sale, and that between those dates the market

price dropped as low as $45; that the highest price attained since the last sale of defendant's stock was $59 per share, 27th of March 1874, and its market value at time of trial was about $15 per share.

6. That notwithstanding the sale of the two hundred shares, the plaintiffs, at any time up to the 18th of October (ten days after the last notification to defendant to take up his stock), were able and willing to deliver to defendant three hundred shares of Philadelphia and Reading stock on payment of balance due by him.

7. Notice that the stock had been sold was promptly sent to and received by the defendant, to which he paid no attention; and from the time of purchase, in May 1872, down to the 1st of January 1874, statements in detail of the accounts between the parties were at regular intervals of about thirty days sent to and received by defendant. These statements, taken together, show a purchase of the stock and its price; the charges of interest and commission, and $75 extra interest as cost of carrying the stock; the credit of dividends received; the sale of two hundred shares September 22d 1873, at $48, and one hundred shares October 18th, at $50¼, and that the balance claimed by plaintiffs the 1st of January 1874 was $1389.41.

8. That each statement of the account received by the defendant contained the request: "Please examine and report on this account as soon as convenient," but down to the time of trial the defendant never objected to the account as stated, nor to the sale of stock as made. He never demanded the stock, nor offered to pay for it and take it up, and in fact admits, when sworn in his own behalf, that he did not at any time intend to pay for it and take it up in case it declined in price.

Are the plaintiffs entitled to recover on the facts as found? The stock having actually been bought in for the defendant, and the certificates delivered to the plaintiffs, the transaction was legitimate so far as they were concerned, and was not a gambling transaction, notwithstanding the defendant on his part did not intend to pay for and take up the stock so purchased: *Smith* v. *Bouvier*, 20 P. F. Smith 325; *Maxton* v. *Gheen*, 25 Id. 166. Other questions, however, are raised affecting the right of recovery.

1. Did the defendant have actual previous notice of the sales?

Of course, the letter of 23d September was not notice of an intended sale on the 22d, for that had already occurred, and the

letter of the 8th October, as a mere notice of sale was defective in not naming the time and place.

2. Are the customs noted in the second and third conclusions of fact valid and binding upon the defendant?

They will be considered separately.

I can perceive no real objection to the validity of a general usage that a broker may use his customer's stock as collateral to carry it for the customer. Such usage contravenes no statute or principle of public policy. The customer can, of course, avoid all trouble in this respect by paying for his stock in full; but where, as here, he only pays a small percentage of its value, while his agent, the broker, must provide for the balance, it would not seem unreasonable, that the broker should for that purpose pledge it as collateral. Knowledge of this custom on the part of Mr. Wilson, who ordered plaintiffs to purchase the stock for defendant, is to be imputed to the defendant himself. I, therefore, regard it as within the known terms and scope of the broker's agency, and that they had authority not only to purchase the stock, but to deal with it in the manner they did in order to carry it for the defendant.

As to the custom to sell without notice, under the circumstances mentioned in the third finding of fact, I assume that if good against the plaintiffs it was binding upon the defendant their principal. I am not unmindful of the general rule of law that a sale of collateral should be upon notice of time and place of sale, but, as said by Judge MITCHELL in *Colket* v. *Ellis*, 10 Phila. 375, this is a privilege that may be waived, and the waiver be evidenced as well by a custom known to and acquiesced in by the parties as by express contract. The custom was known both to Mr. Wilson and the plaintiffs. There was then at least constructive notice of sale to them, and constructive notice to a servant is held to be notice to his principal: *Whitesell* v. *Crane*, 8 W. & S. 373. As between the plaintiffs and the actual holders of the pledge, the sale was undoubtedly sanctioned by the custom. It bound the plaintiffs (themselves brokers) and through them, as I believe, their principal, this defendant; for if correct in the view already expressed that they had authority under the circumstances to make the pledge, the latter was subject to the incident of sale in pursuance of the custom. I, therefore, hold both customs valid and lawful and binding on both parties.

3. Aside from these customs, however, and even conceding that

they do not vary the general rule already stated so as to affect the defendant, I am of the opinion that, since the defendant by his own admission never intended to pay for and take up the stock, he did not act in good faith, and is estopped from complaining of want of notice of sale or any other formality in connection with it. The very object of notice is to enable a party to come forward, pay up and prevent the sacrifice of the pledge, but when he says he would not have availed himself of such notice, nor have interfered to protect the stock by paying the amount he still owed upon it, of what advantage would it have been to him to have had notice, or how has he been harmed by the want of it?

The stock was not sold below the market price, and under no circumstances could it be expected to bring more if he himself was unwilling to interfere. The result to the defendant was, therefore, as favorable as if he had the fullest notice of the intended sale.

4. Independently of any of the foregoing considerations there are further reasons sufficient in my judgment to entitle the plaintiffs to recover in this action.

The failure of the defendant to object to the sale, within a reasonable time after receiving notice, I believe amounts to an implied ratification: see *Kelsey* v. *Bank of Crawford Co.*, 19 P. F. Smith 426. And the statements in evidence giving an account of sales, and particularly the balance claimed as due the plaintiffs 1st January 1874, not being objected to within a reasonable time, constitute an account stated between the parties: *Bevan* v. *Cullen*, 7 Barr 281; *Porter* v. *Patterson*, 3 Harris 229.

What is reasonable time can only be determined upon the special circumstances of each case, as is well illustrated in the opinion delivered in *Colket* v. *Ellis*, already cited.

The financial panic of 1873 was almost unprecedented, and parties were bound to act without unnecessary delay.

For nearly a month after the sale of the two hundred shares, the plaintiffs were still in a position to furnish the defendant the whole number of shares. The propriety and necessity of his acting with reasonable promptness if he objected to the sale as made is obvious, for there was still time for the plaintiffs to correct the error, if one had been committed. From the failure of the defendant to object to what had been done, the plaintiffs might reasonably infer that he acquiesced, and after the lapse of years it is altogether too late to make the objection at the trial. Treating the account rendered

1st January 1874 as an account stated, I am of the opinion that the plaintiffs' use party is entitled to recover the amount shown due by said account, notwithstanding it includes a charge of $75 extra interest, such extra interest, as well as the other charges, being for actual disbursements on part of plaintiffs in defendant's behalf.

Judgment should, therefore, be entered at this time against defendant for the sum of $1759, being the amount due 1st January 1874, with interest to this date.

The defendant filed numerous exceptions to the findings of the referee, which were dismissed by the court, and the report confirmed. The defendant thereupon took this writ, assigning for error the dismissal of his exceptions.

W. L. McLean, for plaintiffs in error.

George R. Bedford, for defendant in error.

The opinion of the court was delivered by

SHARSWOOD, C. J.—Upon the facts, as found by the referee in the court below, we think the conclusion at which he arrived was entirely right.

Judgment affirmed.

It is proposed to consider in this note the effect of stock-exchange usages upon non-members of that body dealing through its members.

The subject has claimed the attention of the English courts in many well-considered cases during the past fifty years, but the American authorities are few.

It had been previously decided in Pennsylvania, in *Colket* v. *Ellis*, 10 Phila. 375, that a custom to sell stock pledged as collateral without notice was valid and lawful, between plaintiffs and defendants, both members of the board of brokers, and presumably having knowledge of its usages. It was expressly stated, however, by the judge who delivered the opinion, that he was not to be understood as intimating what would be the effect if such a usage was set up against an outside party.

The principal case, therefore, is the first that has arisen in this state upon the effect of such a usage upon an outsider.

The English decisions should perhaps be first considered. It was decided by the courts of that country, as early as 1839, that a person who employs a broker must be supposed to give him all authority to act as other brokers do, and it is quite immaterial whether or not he himself is acquainted with the rules by which brokers are governed: *Sutton* v. *Tatham*, 10 Ad. & E. 27; *Mitchell* v. *Newhall*, 15 M. & W. 308; *Bayliffe* v. *Butterworth*, 17 L. J., Ex. 78.

In *Bayley* v. *Wilkins*, 18 L. J., C. P. 273, COLTMAN, J., remarked that he could see no reason for doubting that a person who goes into the stock exchange to buy railway or other stock, must be

taken to have a knowledge of the usual course of business there. But in *Westropp* v. *Solomon*, 8 C. B. 345, a resolution of the exchange, passed after the employment of the broker had begun, was held not binding upon the customer.

Coles v. *Bristowe*, L. R., 4 Ch. Ap. 3, went a step further, in holding that no private instructions given to the broker by a customer could limit the general authority which, by employing him to sell on the stock exchange he gave him, to sell according to the usage of the exchange; and hence that the general custom of the exchange must furnish the rule by which the contract of the parties was to be interpreted. To the same effect is *Grissell* v. *Bristowe*, L. R., 4 C. P. 36.

The rule was pushed still further in *Maxted* v. *Paine*, L. R., 6 Ex. 132, where the principal was compelled to accept as a purchaser an entirely irresponsible person, to whom objection had not been made within the time required by the rules. The doctrine was so far modified, however, in *Duncan* v. *Hill*, L. R., 8 Ex. 248, as to provide that, while a principal who employs a broker undoubtedly authorizes the latter to bind him (the principal) according to the rules and usages of the stock exchange, he does not enter into any obligation to be answerable for the liability which has arisen by reason of his agent's insolvency. The recent case of *Robinson* v. *Mollett*, L. R., 7 H. L. 802, imposed a still further limitation upon the doctrine, namely, that, in order to bind an outsider, the usage set up must be only such an one as relates to the mode of performing the contract, and does not change its intrinsic character.

The following propositions seem to be conclusively settled in England:

1. That the usages of the stock exchange bind the members of that body, and those contracting through them, provided (*a*) such usages contravene no law of the land or public policy; (*b*) that they relate to the mode of performance of the contract, and do not change its intrinsic character.

2. That the principal cannot modify his own liability by private instructions to his brokers.

3. That while the principal is bound by his broker's contracts, he is not liable for all the consequences of his insolvency.

In addition to the cases already cited, the following authorities serve to strengthen the propositions just laid down: *Hodgkinson* v. *Kelly*, L. J., 37 Ch. 837; *Nickalls* v. *Merry*, L. R., 7 Eng. & Irish Ap. Cases 530; *Sheppard* v. *Murphy*, L. R., 2 Eq. 569; *Bowring* v. *Shepherd*, L. R., 6 Q. B. 309; *Lacey* v. *Hill Crawley's Claim*, L. R., 18 Eq. 182; *Lacey* v. *Hill Scrimgeour's Claim*, L. R., 8 Ch. 921.

Turning now to the American decisions with which this note chiefly has to do, we find Mr. Justice FOLGER, in *Walls* v. *Bailey*, 49 N. Y. 473, making use of the following language: "There are cases, too, of principal and agent, where one has been set by another to do acts in a particular business, to be done at a particular locality, as on stock exchange, where a power to deal is a privilege obtained by payment of a fee, and is restricted to a body which has for its regulation and government come under certain prescribed rules or established usages, and as the agent could not do the will of his principal, nor could the principal himself, save in conformity with those rules and usages, it is held that the principal must be bound thereby, whether cognizant of them or not, and that ignorance will not excuse him."

This, however, must be regarded as the loosest sort of a dictum, in view of other New York cases subsequently decided.

In *Allen* v. *Dykers*, 3 Hill 593, the offer was to prove that it was the usage when stock was transferred to dealers by way of collateral security, not to

hold it specifically, but to transfer it by hypothecation, and on tender of the money advanced to return an equal quantity of the same kind, also that this usage was general and known to the agent, who made the loan in question. There was a written contract in this case. Plaintiff borrowed $21,000 at sixty days, offering as collateral two hundred and fifty shares of certain stock, with authority to sell on non-payment at the board of brokers, "notice waived if not paid at maturity." The usage was held inadmissible, the court remarking that it was not necessary to determine what effect would be due to such proof in the case of a simple pledge as collateral security without any further agreement, but where, as in the present case, the terms and conditions were prescribed by the agreement, the parties were bound thereby, and proof of any general or particular usage must be excluded when in direct contradiction to the fair and legal import of a written contract.

In an action on a contract to deliver certain railroad stock, it was held that the plaintiff would not be permitted to prove that by the general custom of brokers and dealers in stocks in the city of New York, the words "dividends or surplus dividends" in the contract, were intended to mean dividends declared on the stock, whether they had been announced before or after the date of the contract, provided that on the day the contract was made the stock was selling in the market "dividend on" and not "ex-dividend;" for the reason that effect could not be given to the custom without making a new agreement between the parties: *Lombardo* v. *Case*, 45 Barb. 95.

As early as *Wheeler* v. *Newbold*, 16 N. Y. 392, it was decided that a local custom of the city of New York to sell stocks, &c., deposited as collateral, upon failure of the debtor to pay the principal debt, was unreasonable and void.

Whitehouse v. *Moore*, 13 Abb. Pr. 142, has sometimes been cited as establishing the contrary, but the case was really decided upon a point of pleading.

"If," say the court in *Taylor* v. *Ketchum*, 5 Rob. N. Y. 513, "the broker desires to possess himself of the power to sell the collateral, on failure to repay advances, without notice of time and place of sale, he must make an agreement that shall permit him to do so."

The familiar case of *Markham* v. *Jaudon*, 9 Am. Law Reg., N. S., 285 (41 N. Y. 235), decided that the purchase of stock on margin created the relation of pledgor and pledgee between broker and customer. Among the offers of testimony in that case was one to show a custom to sell without notice. In passing upon this offer, the Chief Justice observed, "The broker has no right to sell without notice. A practice or custom to do otherwise would have no more force than a custom to protest notes on the first day of grace, or a custom of brokers not to purchase the shares at all, but to content themselves with a memorandum or entry in their books of the contract made with their customer. Such practice in each case would be in hostility to the terms of the contract, an attempt to change its obligation, and would be void. The proof could not therefore be legally given."

While the New York courts have been firm in their refusal to admit evidence of usage to sell pledged stock without the formalities attaching to the sale of ordinary pledges, they have of late been disposed to give effect to any agreements of waiver of the right of notice: *Baker* v. *Drake*, 66 N. Y. 518; *Wicks* v. *Hatch*, 62 Id. 535; but that in the absence of a waiver a sale of collateral by a broker, without notice, amounts to a conversion has been reaffirmed in the latest cases: *Grouman* v. *Smith*, 36 Sickels 25.

So much for the law as to the sale of pledges. Other usages of brokers are

worthy of consideration. In *Shaw* v. *Spencer*, 100 Mass. 385, the defendant offered to show: 1. That it is a matter of common occurrence for certificates of stock to be issued in the name of some other person as trustee, when in fact there is not any trust. 2. Whether certificates of stock issued to a designated person as trustee are constantly bought and sold in the stock market, by a simple endorsement of the certificate, by the person named as the holder, without inquiry as to the authority by which, or to the use or purpose for which, the transfer was made. The former was excluded as having no legal bearing upon the case. As to the latter, FOSTER, J., remarked, "the circumstance that stock certificates issued in the name of one as trustee, and by him transferred in blank, are constantly bought and sold in the market without inquiry is likewise unavailing. A usage to disregard one's legal duty, to be ignorant of a rule of law, and to act as if it did not exist, can have no standing in the courts."

In *Day* v. *Holmes*, 103 Mass. 306, the auditor found that there was a general and well-known usage among stock brokers in Boston, in filling orders for stock, deliverable at any time, at buyer's option, within a certain period, with interest at a sum not exceeding a certain price, to buy the stock for cash, or on a shorter time than ordered, in their own names, not disclosing the names of their principals, and to turn the same, as it is called, or carry it until the maturity of the contract, charging therefor a brokerage in addition to the usual commission for buying, as compensation for the risk of such carrying; that the amount of such extra brokerage differed with the different stocks, and with the length of time for which they were carried; that such usage was well known to persons dealing in stocks of the description in question, but that there was no evidence of actual knowledge by the defendant of such usage. The custom was held bad as against sound policy and good morals. In an action brought to recover a sum of money alleged to be due as the first payment or margin, on a written contract to sell stock, by a member of the Board of Brokers, to be delivered to the buyer in thirty days: if the contract acknowledges the receipt of such first payment, the plaintiff would be allowed to give evidence of what the custom of the Board of Brokers was with regard to making and delivering such contracts, for the purpose of accounting for the delivery of the contract without receiving the money: *Winans* v. *Hassey*, 48 Cal. 634.

In *Marye* v. *Strouse*, 5 Fed. Rep. 486, recently decided, a custom was pleaded that frequently a number of telegrams would be sent to San Francisco in one dispatch. In such case the practice was to charge each customer having an order therein seventy-five cents, that being the proper charge for a single telegram of ten words, although such customer's proportion of the actual cost was often, if not always, much less. The only evidence as to the custom was in answer to the question whether this was a custom among the brokers, and was well known. The response was given, "I tell everybody, make no bones about it," and again, "It (the mode of charging) is well known; we don't make any bones about it; tell everybody." The court said that "this evidence showed that there was nothing clandestine about the charges, but does not show a certain and uniform custom among brokers, known to both parties. A custom or usage like this of charging customers, in addition to commissions, not merely the actual cost of telegrams, but an arbitrary sum, ordinarily much more than the actual cost, if it can be considered reasonable, ought to be established by very satisfactory proof, and it should also appear that both parties had knowledge of it."

So a usage among brokers that the

margins put up to cover advances must be reasonable, is bad, in the absence of a rule being shown by which a reasonable margin can be determined: *Oelricks* v. *Ford*, 23 Howard 49.

Evans v. *Waln*, 21 P. F. Smith 69, is a well known case in Pennsylvania. The facts were substantially these: The plaintiffs being owners of certain shares of C. C. and I. C. stock, employed Markoe & Brother, brokers in Philadelphia, to sell them. The stock was sold by the defendants, brokers in New York, through the agency of one Wister, another broker in Philadelphia. Wister failed, in debt to defendants, while the proceeds of the sale of the stock were in their hands. In remitting the proceeds they withheld the amount of his indebtedness. The defendants offered to prove a custom of stockbrokers of one city, when dealing with those of other cities, to put all the transactions between them into one account, and to remit or draw for the general balance. The offer was refused by the court below, and in passing upon the question in the Supreme Court, Mr. Justice WILLIAMS said, "If there is a custom among stockbrokers, when dealing with others, to appropriate money belonging to the principal, to the payment of his broker's indebtedness, the sooner it is abolished the better. A custom so iniquitous can never obtain the force or sanction of law, and the marvel is that it should be set up as a defence to this action."

One more case remains to be noticed, reported in the latest volume of the New York reports. The plaintiff, a maiden lady, received by mail a circular purporting to be signed by defendant as stockbroker in New York, setting forth the great profits likely to ensue from speculating in stocks, and suggesting several methods of so doing. A "straddle," however, was recommended as by far the safest form of privilege, and the circular went on to say, "when the selection of the stock is left to us we will guarantee that, in the stock we select, the fluctuations will aggregate at least eight per cent. on a sixty-day contract, costing $400, and in case this does not occur we will guarantee no loss, except commissions."

Plaintiff accordingly wrote, enclosing the necessary amount, and directed the broker to invest in a sixty-day straddle contract. The broker selected Lake Shore & Michigan Southern Railroad as the stock, and so notified the plaintiff, adding that he would exercise his best judgment in closing at the most favorable time. On the following day, defendant (the broker) claimed that he sold one hundred shares short against the straddle, at the same price that it was bought for. He claimed to have done this in accordance with a custom among brokers to use a straddle in that way. The court ruled that this evidence was inadmissible, on the ground that the defendant, standing in the relation he did to the plaintiff, could not without her knowledge or consent, under any usage or custom not known to her, or with respect to which she has not contracted, make the short sale on her account, and thus depart from and work out a modification of the arrangement. And in affirming this ruling the Court of Appeals said that the fact that contracts for the use of a straddle in a manner different from that contemplated by the agreement, were more or less common, was wholly immaterial, and a custom or usage which binds the parties to a contract does so only upon the principle either that they have knowledge of its existence, or that it is so general that they must be supposed to have contracted with reference to it: *Harris* v. *Turnbridge*, 38 Sickels 92.

From the cases considered, which include it is believed all the American decisions, it will be observed that our courts have not looked with very great favor upon the usages of stockbrokers

and stock exchanges. Certain it is that we have not been willing to go to the length which the English courts have done.

The conservative policy is perhaps the better one, for as we have seen, the English courts have of late years been obliged, for the protection of the principal, to put some restrictions upon the doctrines too broadly laid down in the earlier cases.

FRANCIS A. LEWIS, JR.

Supreme Court of Tennessee.

O'CONNOR *v.* CITY OF MEMPHIS.

The doctrine formerly accepted, that upon the civil death of a corporation, its real estate reverted to the original grantor, the debts due to and from it were extinguished and its personal property vested in the state, is no longer followed either in England or in this country.

The debts of a municipality are not extinguished by the repeal of its charter and the granting of a new charter to the same corporators, accompanied by the transfer to the new corporation of the municipal property.

Where, after the repeal of a municipal charter, the same people and the same territory are reincorporated as a municipality under a new name, although with different powers and different officers, a suit pending against the old corporation at the date of the repeal may be revived against the new corporation.

A provision in the statute granting the new charter, that the new corporation shall not pay or be liable to pay any debt created by the extinct corporation, impairs the obligation of contracts, and is therefore unconstitutional and void.

Whether in such case the legislature may withhold from the new corporation the taxing power as against debts contracted by the old corporation, not decided.

DEMURRER to *scire facias* to revive suit. The facts were as follows: By the Act of 1879, ch. 10, the legislature repealed certain charters of municipal corporations, and, among others, the charter of the city of Memphis. The repealing act contained no provision for the revivor of suits against any representative or successor of the city. By an act passed the same day, the several communities embraced in the territorial limits of the municipal corporations whose charters were thus abolished, were created taxing districts, "in order to provide the means of local government for the peace, safety and general welfare of such districts." The community embraced in the territorial limits of the city of Memphis became, by the act, the taxing district of Shelby county, and organized under it. The Supreme Court subsequently held, as the result, that the charter of the city of Memphis had been validly repealed, and that the same people and the same territory had been consti-